

European Union Law

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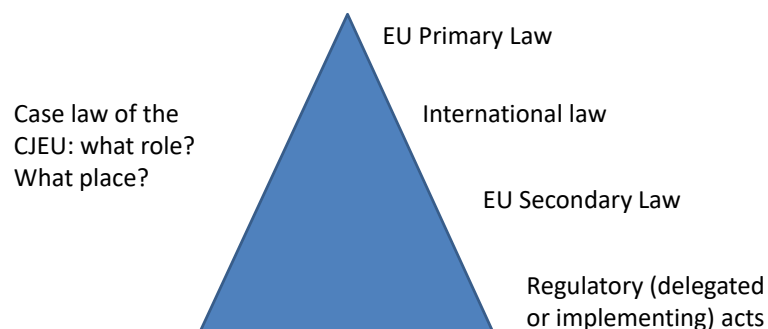
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The sources of EU law: (i) primary law and general principles

Lesson No 9

EU has **its own legal system**, independent both from the international legal order and from the domestic legal systems of the Member States

As such, the EU legal order has **its own sources of law** → **hierarchy of norms**: each source has its own place in the hierarchical pyramid



Hierarchy of norms and Rule of law

- Hierarchical relationship between different sources of EU law → the lower norm is subordinate to the upper one
- Who is to arbitrate? → **judicial review** → it is for the CJEU to scrutinise whether EU norms comply with sources upstream → **rule of law** (cf. Art 2 TEU)
- Is the CJEU empowered to rule on the **validity of the founding Treaties?**
 - Case C-370/12, *Pringle* (as to the compliance with the simplified revision procedures)

At the apex of the pyramid

THE EU PRIMARY LAW

Primary law consists of

- a) Sources of written law
 - i. Founding Treaties
 - ii. Charter of Fundamental Rights of the EU
 - iii. Protocols and Annexes
 - iv. Treaties revision
- b) Sources of unwritten law
 - the general (or fundamental) principles of EU law developed in the case law of the CJEU

Sources of written law

i. Founding Treaties

- a) EU, that replaced and succeeded EC, is founded on two treaties, **TEU** and **TFEU**, having the same legal value: Art 1 TEU, Art 1(2) TFEU
- b) EAEC (Euratom) is founded on its own Treaty

ii. Charter of Fundamental Rights of the EU – it has the same legal value as the Treaties: Art 6(1) TEU

iii. Protocols and Annexes – they form “an integral part of” the Treaties: Art 51 TEU →

- Protocol (No 1) on the role of national Parliaments in the EU
- Protocol (No 2) on the application of the principles of subsidiarity and proportionality
- Protocol (No 3) on the Statute of the CJEU
- Protocol (No 4) on the Statute of the ESCB and ECB

Treaties revision

I. **Revision** procedures for amending the Treaties: Art 48 TEU

- a) **Ordinary (and general)** revision two-stage procedure: Convention + IGC → int’l agreement
- b) 3 **simplified** revision procedures
 - i. Art 48(6) TEU – revision of Part Three TFEU
 - ii. Art 48(7) TEU – Council voting rule (from unanimity to QM); legislative procedure (from special to ordinary)
 - iii. Miscellaneous specific revision procedures: ex. Arts 25, 81(3) TFEU

II. **Accession** to the EU of a new MS: Art 49 TEU → final stage: agreement between old and new MSs

III. **Withdrawal** of a MS from the EU: Art 50 TEU

The dual nature of the founding Treaties

- A) **International agreements** entered into between sovereign States → what about simplified revision?
- B) **Basic Constitutional Charter** of the Union (see lastly Opinion 2/13, para. 163)
 → “the [Union] is based on the **rule of law**, inasmuch as neither its Member States nor its institutions can avoid review of the conformity of their acts with the basic constitutional charter, [the Treaties], which established a complete system of legal remedies and procedures designed to enable the Court of Justice to review the legality of acts of the institutions”: Joined Cases C-402/05 P and C-415/05 P, *Kadi*

Differences in the nature of Treaties’ provisions

- A. **Procedural** provisions:
 - Art 16 TEU: the Council
 - Art 293 et seq TFEU: procedures for the adoption of acts
 - Art 12 TFEU on consumer protection requirements
- B. **Substantive** provisions:
 - Art 18 TFEU: discrimination on ground of nationality
 - Art 20 TFEU: EU citizens’ rights
 - Art 45 TFEU: free movement of workers
 - Arts 101 and 102 TFEU: competition law